

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY	)	
	)	
Proposed general increase in electric rates	)	Docket No. 07-0566

**THE PEOPLE OF THE STATE OF ILLINOIS’  
MOTION FOR SUMMARY JUDGMENT ON RIDER SMP**

The People of the State of Illinois (“the People”), through Lisa Madigan, Attorney General of the State of Illinois (“the People”), pursuant to Part 200.190 of the Illinois Commerce Commission’s Rules of Practice (83 Ill.Admin.Code 200.190), respectfully move for summary judgment that Commonwealth Edison Company’s (“ComEd”) request for approval of Rider SMP be rejected as improperly mandating consumer payment for plant that, in the words of ComEd’s witnesses, is “discretionary” and “unnecessary.” In support of this Motion, the People state as follows:

1. Sections 9-101 and 9-201 of the Public Utilities Act (“the Act”) require the establishment of utility rates that are just and reasonable. 220 ILCS 5/9-101, 9-201(c).

2. Section 9-211 of the Act provides that “(T)he Commission, in any determination of rates or charges, shall include in a utility’s rate base only the value of such investment which is both prudently incurred and used and useful in providing service to public utility customers.” 220 ILCS 5/9-211. Section 9-215 of the Act, although historically applied to generation capacity, provides that the Commission has

the authority to “determine whether or not such utility’s capacity is in excess of that reasonably necessary to provide adequate and reliable electric service. Excess capacity for purposes of this Section shall mean capacity in excess of that reasonably necessary to provide adequate and reliable electric service. Such consideration shall be related to the utility’s historic and projected peak.” 220 ILCS 5/9-215. Although ComEd is now a distribution only utility, its delivery capacity must still be limited to that “reasonably necessary to provide adequate and reliable electric service.”

3. The Act further makes multiple references to the mandate that utility rates be least-cost. Section 1-102 of the Act states that “the General Assembly finds that the health, welfare and prosperity of all Illinois citizens require the provision of adequate, efficient, reliable, environmentally safe and *least-cost* public utility services at prices which accurately reflect the long-term cost of such services and which are equitable to all citizens.” 220 ILCS 51-102 (emphasis added). The General Assembly further defined “efficiency” as “the provision of reliable energy services at the least possible cost to the citizens of the State”. 220 ILCS 5/1-102(a). Likewise, Section 8-401 of the Act requires every public utility subject to the Act to provide service and facilities which are in all respects adequate, efficient, reliable and environmentally safe and which, consistent with these obligations, constitute the *least-cost means of meeting the utility’s service obligations*. 220 ILCS 5/8-401 (emphasis added).

4. ComEd has repeatedly stated in pre-filed testimony that its proposed tariff known as Rider System Modernization Project (“Rider SMP”) is intended to recover a

return of and on the investment costs of capital projects that provide “improvements beyond ComEd’s basic service obligation.” ComEd Ex. 1.0 (Mitchell Direct) at 10. ComEd witness Ms. Tierney stated: “Put simply, ComEd’s proposal for the SMP Rider is a creative mechanism for funding *discretionary* projects that have the potential – if justified before the Commission – to create value to consumers but which *are not ‘necessary’* for the provision of safe, reliable, efficient distribution service.” ComEd Ex. 18.0 (Tierney Rebuttal) at 16 (emphasis added). The Company views Rider SMP as the cost recovery mechanism for projects that “reflect ComEd’s current vision for a distribution system of the future.” ComEd Ex. 14.0 at 2 (Crumrine Supplemental Direct). Accordingly, Rider SMP will trigger monthly rate increases to cover a return of and on plant that is admittedly not necessary for the provision of safe, reliable, efficient distribution service.

5. Rider SMP is a utility tariff, and its construction is a question of law. *See Bloom Township High School v. Illinois Commerce Commission*, 309 Ill. App. 3d 163, 174 (1<sup>st</sup> Dist. 1999). A utility tariff falls within the definition of a “rate” as contained in the Public Utilities Act (*see* 220 ILCS 5/3-116), and the Act mandates that all rates must be reasonable. *Bloom Township*, 309 Ill. App.3d at 175.

6. ComEd is requesting mandatory rate increases or surcharges through Rider SMP to fund projects that Company witnesses admit are not necessary for the provision of electric service. Further, Rider SMP would not authorize the Commission to limit the costs associated with these unnecessary and discretionary projects once the projects

themselves are allowed. Rates that include surcharges to reflect capital costs of plant that the Company admits are not necessary for the provision of “adequate, efficient, reliable and environmentally safe” electric delivery service are not just and reasonable as a matter of law. *See* 220 ILCS 5/9-215. For these reasons alone, Rider SMP must be rejected.

7. Moreover, the Commission cannot fulfill its statutory duty to balance competing interests of public utilities’ stockholders and ratepayers in establishing just and reasonable utility rates without taking into account the impact of proposed rates on ratepayers. *Abbott Laboratories v. Illinois Commerce Comm’n*, 289 Ill.App.3d 705, 682 N.E.2d 340 (First Dist. 1997). Utilities filing for rate increases must file bill impact data as a part of any rate increase filing. *See, e.g.*, 83 Ill.Admin.Code Part 285.5135. Yet, the only information ComEd has supplied regarding estimated bill impacts came in the Supplemental Testimony of ComEd witness Paul Crumrine who said: “the exact rate impacts after 2009 are difficult to estimate with any degree of certainty as they are highly dependent upon when ComEd’s next distribution rate case will occur and how any SMP investments that are rolled into the distribution rate base at that time will be allocated to customers through distribution rates. Thus, while ComEd Ex. 14.1 shows the SMP Adjustment tracking the growth of SMP capital expenditures and increasing over time, it is unclear whether the rate impacts shown are indicative of the ultimate rate impact on each of the customer classes beyond 2009.” Supplemental Direct testimony filing, in Ex. 14.1, page 5. Mr. Crumrine characterized the bill impact data as “illustrative to highlight the fact that they are not intended to be regarded or construed as definitive statements of the SMP Adjustment charges or, in turn, the rate impacts.” ComEd Ex. 14.0 at 5. In

addition, the amounts included in ComEd Ex. 14.1 were based on a 2005 business case, which is now outdated and no longer relevant given the Company's decision to substantially increase its project cost estimates of Rider SMP projects, based on a 2008 RFP. ComEd. Ex. 23.0 at 8. The record is devoid of reliable estimates of the burden the SMP Rider will place on ratepayers.

8. Indeed, customer rate implications for the Rider SMP process and the Company's proposed projects have proven impossible to define because cost estimates have shifted throughout the case. ComEd's primary Rider SMP project, Advanced Metering Infrastructure ("AMI"), is described by the Company as "the foundation from which to build future functionality to support ComEd's customers' future needs." ComEd Ex. 23.0 (Clair Rebuttal) at 5. Cost estimates for AMI have ranged from non-existent in the Company's Direct testimony, to \$615,000,000 in Supplemental Direct testimony (*see* ComEd Ex. 16.0 [Clair] at 5); to \$600,000,000 to \$1,000,000,000 in its latest Rebuttal round of testimony (*see* ComEd Ex. 23.0 [Clair] at 7). The Company has not updated its Exhibit 14.1 in any sort of attempt to estimate bill impacts at the higher level of of the SMP project costs.

9. The reason for requiring that costs or plant be necessary for the provision of adequate and reliable service is well illustrated in this instance. The discretionary investment ComEd has described may not be required, requested or used by many of its customers, much like some telephone customers decline to purchase advanced telecommunications services. Until the Commission and the public know what services

will be provided as a result of these discretionary investments, the rate treatment cannot be determined. For example, depending on the services made available and the capacity provided, there might be other revenue sources to fund these non-essential investments. In that event, it would be unlawful and anti-competitive to establish a mechanism where ratepayers, who might not use the services provided by this discretionary investment, pay the full cost.

10. The Commission has the responsibility of balancing the right of the utility's investors to a fair rate of return against the right of the public that it pay no more than the reasonable value of the utility's services. While the rates allowed can never be so low as to be confiscatory, within this outer boundary, if the rightful expectations of the investor are not compatible with those of the consuming public, it is the latter which must prevail. (*See State Pub. Util. Com. ex rel. City of Springfield v. Springfield Gas & Elec. Co.*, 291 Ill. 209, 125 N.E. 891(1919)).

11. A motion for summary judgment is available in Commission hearings. *Bloom Township*, 309 Ill. App. 3d at 178. The Illinois Code of Civil Procedure, allows summary judgment on a specific issue when a judge “determines that there is no genuine issue of material fact as to one or more of the major issues in the case, ... and the court finds that there is no genuine issue of material fact as to that issue or those issues.” 735 ILCS 5/2-1005(d). In this docket, ComEd witnesses have admitted that the investments for which ComEd seeks recover in Rider SMP are “unnecessary” and “discretionary.”

This uncontested fact should lead the Commission to find that the Rider cannot be approved as a matter of law.

12. As a matter of law, ComEd's Rider SMP must be rejected. However, the Commission certainly is free to revisit the issue of so-called Smart Grid investment in another docket to explore the re-definition of what constitutes basic, least cost electric delivery service within the context of ComEd's proposed plant investments. Only then can the issue of whether ratepayers should be charged for the kinds of projects Rider SMP envisions be addressed.

WHEREFORE, for the foregoing reasons, the People of the State of Illinois request that the Commission reject ComEd's proposed Rider SMP, and the requested projects to be approved for Rider SMP recovery in this case, as a matter of law.

Respectfully submitted,

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